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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/770,922	02/02/2004	George Gonzalez	GONZAL-42510	1679

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EXAMINER

BERTRAM, ERIC D

ART UNIT	PAPER NUMBER
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3766

MAIL DATE	DELIVERY MODE
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10/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/770,922

Applicant(s)

GONZALEZ, GEORGE

Examiner

Eric D. Bertram

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 56-98 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 56-98 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 59-98 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

2. Applicant's amendments to the claims to overcome the 35 USC 112(2) rejections are acknowledged and accepted. The 35 USC 112(2) rejections have been withdrawn.

Oath/Declaration

3. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

4. The correct statement should read: "I acknowledge the duty to disclose information which is material to patentability of this application in accordance with Title 37, Code of Federal Regulations Section 1.56." (i.e., not "material to the examination" and "1.56(a)."

Allowable Subject Matter

5. The indicated allowability of claims 59-65 is withdrawn in view of the newly discovered reference(s), such as Reference A. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 59-98 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reference A ("Neurological Examination," Examiner-cited NPL) in view of Zhukova et al. (US 6,209,545, hereinafter Zhukova).

9. Regarding claims 56-66 and 68-72, 74-78, 80-84, 86-90, 92-96 and 98, Reference A discloses a method for identifying a patient's neurological disorders for treatment, specifically a standard neurological examination. In the examination, a practitioner performs a plurality of tests that inherently help identify the existence, site and cause of a lesion in a patient (See Reference B, "Introduction to the Neurological Examination" for support of inherency). One set of tests is a plurality of reflex tests, each of which is a combined test that comprises lengthening and stretching multiple muscles while testing a reflex (See pages 7 and 8). As a result, multiple combined tests

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are performed. The reflex inherently tests muscle function as well since in order for the reflex to occur, the muscles that contract during a reflex must be working properly. A reflex test also combines a sensory and/or cognitive test in that the patient must sense/be cognizant of the striking of tissue (e.g., a tendon) that results in the reflex. As is known in the art, certain reflexes inherently involve the stimulation of a nerve root, specifically the ankle reflex.

10. After the end of the neurological examination, the site of a lesion may be determined, and then treatment may begin. However, Reference A is silent as to the treatment of the lesion. Attention is directed to the secondary reference of Zhukova, which discloses a method for treating lesions of the nervous system by resetting nerve supply to an area of dysfunction through physical manipulation of tissue that entraps a nerve associated with the dysfunction (Col. 4, line 17-Col. 6, line 68). This treatment is continued until the patient is cured (Col. 3, lines 64-65). Therefore, all of the method steps recited in the claims are known in Reference A and Zhukova. The only difference is the combination of "old elements" into a single method. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to combine the Neurological Examination of Reference A with the treatment of Zhukova since the combination does not negatively affect either method, and the combination would produce the predictable and complete result of both diagnosing and then curing a neurological problem.

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11. Regarding claim 62, page 3 of Reference A discloses that the Trigeminal cranial nerve test is performed with/by testing Temporal and Masseter muscle strength.

12. Regarding claims 67, 73, 79, 85, 91 and 97, while Reference A lists a plurality of reflexes, no order is specified as to their delivery. As a result, one of ordinary skill in the art would choose an order that works best both for the patient and the practitioner. It would be obvious then, that a practitioner may begin with the ankle reflex and then move up the body towards the head.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric D. Bertram whose telephone number is 571-272-3446. The examiner can normally be reached on Monday-Thursday from 8:30-7 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl H. Layno can be reached on 571-272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Eric D. Bertram
Examiner
Art Unit 3766


Mark Bockelman
Primary Examiner
Art Unit 3766

EDB